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VIA ELECTRONIC MAIL

December 13, 2017

Hon. Paul A. Crotty  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

Subject: Zvonko, et al. v. Eli's Bread, et ano., 14-cv-08105

Dear Judge Crotty:

The 17 Plaintiffs in this action, along with Defendants Eli's Bread, Inc. and Eli Zabar ("Defendants"), jointly request that your Honor approve the settlement reached in this matter. Copies of the 17 signed settlement agreements are filed herewith.

Plaintiffs sued for unpaid wages under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201 et seq. and the New York Labor Law ("NYLL"). Defendants claim that Plaintiffs at all times were paid all the amounts that were due and that their actions fully complied with federal and state law.

There were a number of contested issues in this case. Plaintiffs, each of whom were delivery drivers for Defendant Eli's Bread, were paid at a fixed rate for each day of pay. Plaintiffs each claim that they worked hours in excess of 40 per week, but were not paid for their labor. Defendants admitted that the drivers worked some overtime, but hotly contested the amounts of overtime hours claimed by Plaintiffs. In that regard, only sporadic punch or other time records were kept concerning the hours worked by Plaintiffs. Defendants also maintained that the Plaintiff was not entitled to any liquidated damages in the event that they were found to have not been paid for all overtime.

Plaintiffs believe that, if they were to prevail on all of their claims, inclusive of attorney fees and liquidated damages, the total amounts would be approximately \$~~1,000,000~~. If the Defendants prevailed on the good faith defense as it related to liquidated damages, and in proving their assertions regarding the number of hours worked by Plaintiffs, then Plaintiffs

would be entitled to recover approximately \$~~100,000~~ plus attorneys' fees. The gross settlement amount is approximately \$~~100,000~~ for all Plaintiffs, payable over varying periods of time.

The settlement agreements collectively provide that this amount will be allocated as follows: Plaintiffs will receive a total of approximately \$~~100,000~~ and (2) Plaintiff's counsel will receive \$~~100,000~~. The foregoing settlement was reached after protracted settlement discussions over a period of years, including three separate settlement conferences with Magistrate Judge Netburn, who in 2015 advised the Plaintiffs to settle their claims for a total amount of \$. including attorneys' fees.

I ask that the Court note that the retainer agreement I had with my clients called for this office to receive 1/3 of any recovery and, in addition, to be reimbursed for all court expenses. However, in an effort to reach a resolution of this case, I volunteered to take much less than set forth in my retainer agreement. In that regard, I have expended approximately \$24,000 in out-of-pocket costs associated with the prosecution of this case, including deposition transcript costs, filing fees, and approximately \$10,000 for the preparation of a comprehensive damages analysis and spreadsheets. Thus, a \$~~100,000~~ attorneys' fee award would result in \$~~100,000~~ in actual fees. As the attached time record reflects, I have expended approximately 438 hours in connection with this action. Applying my usual \$450 per hour fee rate to that total would result in fees of \$197,100.

Court approval of an FLSA settlement is appropriate "when [the settlement] [is] reached as a result of contested litigation to resolve bona fide disputes." *Johnson v. Brennan*, No. 10-cv-471, 2011 WL 4357376, at \* 12 (S.D.N.Y. Sept. 16, 2011). "If the proposed settlement reflects a reasonable compromise over contested issues, the court should approve the settlement." *Id.* (*citing Lynn's Food Stores, Inc. v. United States*, 679, F.2d 1350, 1353 n. 8 (11<sup>th</sup> Cir. 1982)).

The settlement agreement reached by the parties is fair. Although Plaintiffs' recollections of their hours worked are sufficient to prove the hours that they worked, *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946), superseded by statute, Portal-to Portal Act of 1947, 29 U.S.C. §216(b) (2006), as recognized in *Gorman v. Consol. Edison Corp.*, 488 F.3d 586, 590 (2d Cir. 2007), their recollection is not binding on the fact finder. Given Plaintiffs' interest in the outcome of this matter, it is probable that the fact finder would apply some discount factor to their claimed hours.

The settlement provides, with certainty, that Plaintiffs will receive nearly all of their alleged unpaid wages. If the Defendants' strongest defenses are given credence, Plaintiffs would recover significantly less than their claimed unpaid wages. Given the sharp divisions in the parties' version of events, the fact that all trial witnesses would have an interest in the outcome, and the limited documentary evidence available, this range of recovery is reasonable.

The fact that the matter is being resolved by way of settlement also eliminates the burden and uncertainty of collection proceedings.

Given the conflicting evidence, the quality of the evidence and counsel and the allocation of the burden of proof on Plaintiffs, the settlement represents a reasonable compromise with respect to

contested issues. We jointly request the settlement agreement's approval. See *Reyes v. Altamarea Group, LLC*, 10-cv-6451 (RLE), 2011 WL 4599822 at \* 6 (S.D.N.Y. Aug. 16, 2011) (Ellis, M.J.).

Finally, as is reflected in each of the settlement agreements, the parties respectfully request that this court retain jurisdiction over this case for the purpose of enforcing the agreements.

Respectfully submitted,

s/

Vincent E. Bauer

TIME RECORD

<u>DATE</u>	<u>DESCRIPTION</u>	<u>TIME</u>
08/05/14	Prepare complaint	1.2 hrs.
08/08/14	Prepare complaint	0.8 hrs.
09/03/14	Prepare complaint	0.7 hrs.
09/09/14	Prepare complaint, and conference with clients	1.1 hrs.
09/29/17	Revise complaint	1.0 hrs.
09/30/17	Conference with clients	0.5 hrs.
10/31/14	Conference with potential clients	0.6 hrs.
11/03/14	Conference with new plaintiffs	0.5 hrs.
11/05/14	Attention to stipulation issues, research plaintiffs' workweek	1.1 hrs.
11/07/14	Conference with potential plaintiff	0.4 hrs.
11/24/14	Teleconference re: settlement	0.5 hrs.
12/03/14	Review hours breakdown, and teleconference w/ Z. Zvonko	0.5 hrs.
12/04/14	Conference with clients	0.6 hrs.
12/09/17	Teleconference with Keita re: damages	0.3 hrs.
12/12/14	Teleconference re: extension	0.2 hrs.
12/17/14	Attention to retaliation issue	0.3 hrs.
01/23/15	Review case management plan, letter to court, teleconference re: same	0.6 hrs.
01/28/15	Attention to case management issue, teleconference to counsel re: same	0.7 hrs.
01/29/15	Court appearance, prepare for same	2.1 hrs.

02/04/15	Court conference; travel to/from same	1.2 hrs.
02/09/15	Prepare letter to court	0.3 hrs.
03/01/15	Attention to confidentiality agreement	0.4 hrs.
03/09/15	Attention to damages calculations, teleconference with clients re: same	0.6 hrs.
03/11/15	Conference with clients	1.1 hrs.
03/12/15	Conference with clients attention to settlement	3.1 hrs.
03/16/15	Prepare damages analysis, teleconference w/ G. Pinto	2.1 hrs.
03/18/15	Attention to damage analysis	0.4 hrs.
04/03/15	Conference with Bekaye	0.4 hrs.
04/07/15	Attention to settlement calculations	0.6 hrs.
04/08/15	Conference with Oumarou; attention to damage calculations; conference with J. Jorge	1.2 hrs.
04/16/15	Conference w/ Keita; attention to settlement	0.7 hrs.
04/20/15	Attention to settlement analysis; teleconference w/ clients re: same	1.4 hrs.
04/22/15	Attention to settlement analysis; teleconference w/ clients re: same	0.8 hrs.
04/23/15	Attention to settlement	0.3 hrs.
04/24/15	Attention to settlement analysis	0.5 hrs.
04/27/15	Review spreadsheets	0.4 hrs.
04/29/15	Conference with Ba	0.4 hrs.
04/30/15	Attention to retaliation; damage calculations	0.4 hrs.
05/04/15	Attention to settlement	0.5 hrs.
05/05/15	Attention to settlement; Ba issues	0.8 hrs.

05/07/15	Attention to settlement	0.7 hrs.
05/15/15	Attention to settlement; teleconference with clients	0.6 hrs.
05/21/15	Attention to settlement	0.3 hrs.
06/03/15	Attention to damages spreadsheet; teleconference with clients	1.3 hrs.
06/05/15	Prepare for settlement conference	2.2 hrs.
06/08/15	Prepare for mediation	4.3 hrs.
06/09/15	Attention to settlement; conference with clients	3.3 hrs.
06/10/15	Prepare for settlement conference	1.7 hrs.
06/11/15	Prepare for settlement conference; conference w/ opposing counsel	2.6 hrs.
06/12/15	Mediation	4.5 hrs.
06/15/15	Conference re: statistics	0.3 hrs.
06/18/15	Attention to settlement issues	0.4 hrs.
06/19/15	Attention to settlement	0.5 hrs.
07/01/15	Attention to settlement	0.3 hrs.
07/02/15	Attention to damages	1.3 hrs.
07/06/15	Attention to settlement; conference with Keita	0.8 hrs.
07/09/15	Amend complaint	0.6 hrs.
07/10/15	Attention to settlement	0.5 hrs.
07/14/15	Settlement meeting	1.2 hrs.
07/15/15	Attention to settlement	0.6 hrs.
07/16/15	Attention to settlement	1.2 hrs.
07/17/15	Attention to settlement	1.2 hrs.

07/20/15	Prepare for settlement conference	1.3 hrs.
07/21/15	Attention to settlement	3.2 hrs.
07/22/15	Prepare for settlement conference	3.2 hrs.
07/23/15	Mediation Conference	5.6 hrs.
07/24/15	Attention to settlement	1.2 hrs.
07/27/15	Attention to settlement	1.3 hrs.
07/30/15	Conference w/ clients re: settlement	2.1 hrs.
08/25/15	Teleconference re: settlement	0.3 hrs.
08/28/15	Teleconference w/ client, counsel; prepare settlement calculations	1.2 hrs.
09/01/15	Teleconference with clients regarding settlement; teleconference w/ counsel	1.8 hrs.
09/02/15	Teleconference re: settlement	1.4 hrs.
09/10/15	Attention to discovery issues	0.4 hrs.
09/11/15	Court appearance; prepare for same	1.0 hr.
09/14/15	Attention to settlement	0.3 hrs.
09/16/15	Teleconference with Zvonko re: settlement	0.2 hrs.
09/21/15	Conference w/ Badiane; attention to damages calculations	0.5 hrs.
09/22/15	Conference w/ J. Jorge; review punch records	0.5 hrs.
09/23/15	Teleconference w/ clients re: settlement	0.3 hrs.
09/30/15	Attention to settlement; emails with Milan	0.6 hrs.
10/01/15	Review Milan email	0.3 hrs.
10/02/15	Teleconference re calculations	0.4 hrs.
10/05/15	Teleconference w/ Z. Zvonko re: witness	0.2 hrs.

10/06/15	Teleconference w/ opposing counsel re: settlement, Teleconference w/ Badiane	0.5 hrs.
10/07/15	Teleconference re: settlement	0.4 hrs.
10/27/15	Conference with S. Obradovic; teleconference with J. Jorge	0.8 hrs.
10/28/15	Teleconference w/ J. Jorge re: evidence issue	0.2 hrs.
10/29/15	Prepare initial disclosures; attention to witness issue	1.1 hrs.
11/02/15	Review calculations; Teleconference Zvonko	1.2 hrs.
11/05/15	Attention to settlement, damage calculations	0.7 hrs.
11/09/15	Teleconference w/ R. Frank	0.3 hrs.
11/12/15	Prepare document requests	0.5 hrs.
11/16/15	Attention to damage calculations	0.6 hrs.
11/18/15	Attention to subpoena issues	0.4 hrs.
11/20/15	Review settlement calculations	0.3 hrs.
11/23/15	Teleconference re: settlement; review calculations and prepare settlement analysis	1.1 hrs.
11/25/15	Attention to settlement	0.8 hrs.
12/01/15	Attention to settlement	0.5 hrs.
12/03/15	Teleconference re: settlement; attention to Milan subpoena	0.6 hrs.
12/04/15	Teleconference re: settlement; prepare calendars; teleconference re: subpoena	1.3 hrs.
12/07/15	Teleconference re: settlement	0.2 hrs.
12/17/15	Prepare for Rataje deposition; attention to new deposition location issues	1.6 hrs.
12/18/15	Teleconference w/ Z. Zvonko	0.2 hrs.

01/06/16	Attention to discovery	0.6 hrs.
01/14/16	Teleconference re: settlement; prepare draft request responses	2.2 hrs.
01/15/16	Prepare discovery responses	1.3 hrs.
01/18/16	Prepare discovery responses; teleconference w/ T. Ba	0.7 hrs.
01/25/16	Attention to discovery; Ratajae deposition	0.7 hrs.
01/27/16	Attention to deposition issues	0.4 hrs.
02/12/16	Research re: day rate issue; prepare document requests	1.2 hrs.
02/15/16	Research day rate issue	1.5 hrs.
02/16/16	Prepare record document requests	0.9 hrs.
01/17/16	Conference w/ Z. Zvonko and M. Badiane; calculate attorney's fees	0.9 hrs.
02/18/16	Attention to damage calculations	0.6 hrs.
02/19/16	Prepare settlement calculations	0.5 hrs.
02/24/16	Teleconference re: depositions	1.3 hrs.
02/26/16	Teleconferences regarding settlement	0.6 hrs.
02/19/16	Teleconference re: deposition	0.5 hrs.
03/01/16	Teleconference re: settlement/depositions	0.3 hrs.
03/02/16	Teleconference re: depositions	0.2 hrs.
03/04/16	Attention to depositions	0.7 hrs.
03/07/16	Attention to settlement, discovery	0.3 hrs.
03/09/16	Teleconference re: discovery; prepare for same	0.3 hrs.
03/22/16	Teleconference w/ R. Sharlat	0.2 hrs.
03/25/16	Teleconference w/ R. Sharlat	0.2 hrs.

04/06/16	Teleconference re: witnesses; conference w/ S. Obradovic re: same	1.0 hrs.
04/07/16	Court appearance; prepare for same	1.9 hrs.
04/12/16	Attention to discovery issues	0.4 hrs.
04/21/16	Prepare third document reports	0.3 hrs.
04/27/16	Teleconference w/client re: status; Teleconference w/ counsel	0.8 hrs.
05/11/16	Court Appearance; prepare for same; teleconference w/ counsel	2.9 hrs.
05/16/16	Conference w/ Z.Z., J.J., and M.B.	0.5 hrs.
06/03/16	Conference w/ Z.Z.; prepare declaration	0.6 hrs.
06/06/16	Prepare email re: discovery	0.4 hrs.
06/08/16	Conference w/ Z.Z.; prepare email re: discovery, review punch records	1.7 hrs.
06/10/16	Prepare letter to court re: discovery; Conference w/ M. Badiane	1.8 hrs.
06/13/16	Prepare letter to court; review production	1.6 hrs.
06/13/16	Teleconference re: depositions	0.7 hrs.
06/15/16	Teleconference re: deposition; review production	1.4 hrs.
06/16/16	Teleconference re: deposition; conference w/ Z.Z.	0.8 hrs.
06/23/16	Attention to depositions; review GPS Records; email w/ counsel	2.2 hrs.
06/24/16	Review document production; attention to deposition scheduling	1.6 hrs.
06/27/16	Prepare for court appearance; review GPS records	1.6 hrs.
06/28/16	Court conference; research good faith defense	2.7 hrs.
06/30/16	Deposition preparation	1.3 hrs.

07/05/16	Prepare for depositions	1.4 hrs.
07/05/16	Deposition preparations	2.7 hrs.
07/07/16	Deposition; preparation for Stewart deposition	10.7 hrs.
07/08/16	Deposition; prepare for same	7.2 hrs.
07/11/16	Deposition; prepare for same	2.2 hrs.
07/12/16	Deposition preparation	1.5 hrs.
07/13/16	Jorge deposition	6.0 hrs.
07/15/16	Deposition	5.6 hrs.
07/18/16	Deposition	6.3 hrs.
07/20/16	Deposition	7.1 hrs.
07/21/16	Deposition	4.5 hrs.
07/22/16	Niamou witness preparation	1.0 hrs.
07/25/16	Niamou deposition; prepare for Shaloft deposition	6.7 hrs.
07/26/16	Shaloft deposition; prepare for same; teleconference w/ clients re: settlement	3.8 hrs.
07/27/16	Deposition	4.2 hrs.
07/28/16	Deposition	5.4 hrs.
08/08/16	Ba Prep; teleconference w/ J. Jorge	1.1 hrs.
08/09/16	Ba deposition	6.5 hrs.
08/11/16	Deposition	5.4 hrs.
08/12/16	Breen deposition; prepare for same	2.3 hrs.
08/17/16	Conference w/ Z.Z.	0.5 hrs.
08/22/16	Teleconference w/ R. Scharlat	0.2 hrs.
08/24/16	Conference w/ S. White re: documents	0.5 hrs.

08/25/16	Prepare letter to court	0.3 hrs.
08/26/16	Email regarding extension	0.2 hrs.
09/06/16	Teleconference re: deposition	0.2 hrs.
09/07/16	Conference w/ Z. Keita, M. Sidibe	0.9 hrs.
09/12/16	Attention to deposition scheduling; review court orders	0.8 hrs.
09/14/16	Email re: depositions/settlement	0.2 hrs.
09/16/16	Teleconference re: discovery	0.2 hrs.
09/20/16	Prepare for Caetro deposition	1.2 hrs.
09/21/16	Castro deposition; prepare for same	3.1 hrs.
09/22/16	Court appearance; prepare for same	1.4 hrs.
09/26/16	Deposition preparation	2.7 hrs.
09/27/16	Deposition; prepare for same; prepare letter to court re: discovery	3.4 hrs.
09/28/16	Zabar deposition; prepare for same; prepare letter to court; review deposition transcripts	4.5 hrs.
11/02/16	Court appearance; review registers	1.5 hrs.
12/26/16	Conference w/ counsel re: matter	0.5 hrs.
01/09/17	Research good faith defense	0.6 hrs.
01/10/17	Teleconference w/ M. Badiane; research burden of proof	0.7 hrs.
01/11/17	Prepare mediation letter	0.7 hrs.
01/13/17	Prepare for settlement conference	1.1 hrs.
01/16/17	Prepare pre-mediation statement	1.6 hrs.
01/17/17	Court appearance; prepare for same	2.6 hrs.
01/18/17	Prepare mediation statement	1.3 hrs.

01/19/17	Prepare for mediation; teleconference w/ clients	1.7 hrs.
01/20/17	Mediation preparation	4.2 hrs.
01/24/17	Settlement conference	6.7 hrs.
01/26/17	Teleconference re: settlement	0.8 hrs.
02/02/17	Prepare letter to court; teleconference w/ Badiane, Jorge	0.8 hrs.
02/03/17	Prepare for deposition	0.4 hrs.
02/08/17	Conference w/ M. Badiane, B. Cummins	0.6 hrs.
02/13/17	Prepare for settlement meeting	0.3 hrs.
02/14/17	Meeting w/ R. Sharlat; teleconference w/ clients re: settlement	1.6 hrs.
02/15/17	Court appearance; prepare for same; teleconference w/ M. Badiane	2.4 hrs.
02/16/17	Teleconference w/ M. Badiane, J. Jorge re: settlement/ retaliation	0.6 hrs.
03/06/17	Teleconference w/ Makhete; counsel	0.2 hrs.
03/09/17	Email re: Jorge issue; review letter to court; Jorge letter	0.5 hrs.
03/15/17	Attention to Jorge retaliation issue	0.4 hrs.
03/16/17	Teleconference w/ S. Jadric	0.3 hrs.
03/21/17	Prepare letter to court; teleconference w/ J. Jorge	0.4 hrs.
03/23/17	Teleconference, emails re: pre-trial conference	0.5 hrs.
03/27/17	Court appearance	1.8 hrs.
05/03/17	Teleconference re: settlement agreement, prepare email re: settlement	0.6 hrs.
05/10/17	Teleconference re: settlement	0.5 hrs.
05/19/17	Teleconference w/ counsel and court	1.1 hrs.

05/23/17	Teleconference w/ counsel re: settlement	0.3 hrs.
05/24/17	Teleconference w/ counsel and J. Jorge re: settlement	0.6 hrs.
05/25/17	Teleconference w/ Z. Zoric, and J. Jorge, re: settlement	0.6 hrs.
05/29/17	Prepare letter to court	0.4 hrs.
05/30/17	Teleconference w/ clients regarding settlement; prepared email regarding same	0.6 hrs.
05/31/17	Teleconference with 17 clients re: settlement; Conferenced individually with S. Obradovic	1.6 hrs.
06/01/17	Participate in settlement teleconference w/ J. Netlburn	0.6 hrs.
06/08/17	Teleconference w/ counsel re: Pinto; Teleconference w/ G. Pinto re: hearing.	0.4 hrs.
06/09/17	Attention to damage calculation issues; trial preparations, including document review	1.6 hrs.
06/12/17	Research re: witness issue; review letter letter correspondence re: same; teleconference w/ C. Wolff re: strategy.	1.6 hrs.
06/13/17	Trial preparation, including teleconference w/ clients document review; prepare letter to court.	2.7 hrs.
06/14/17	Trial preparation, including reviewing court requirements, preparing pre-trial order, document review	3.3 hrs.
06/15/17	Trial preparation, including drafting motion in limine, coordinating transcript digests, exhibits.	3.4 hrs.
06/16/17	Prepare pre-trial memorandum; coordinate re: deposition transcripts	4.6 hrs.
06/19/17	Prepare pre-trial memorandum, conduct research regarding same.	3.4 hrs.
06/20/17	Court appearance; prepare for same, teleconference	4.3 hrs.

	w/ clients	
06/21/17	Prepare pre-trial memorandum	2.4 hrs.
06/22/17	Defend deposition; teleconference re: settlement	4.5 hrs.
06/23/17	Teleconference re: settlement (13 plaintiffs); prepare pre-trial order	4.6 hrs.
06/30/17	Prepare pre-trial order; review transcripts	3.9 hrs.
07/01/17	Trial preparation	5.6 hrs.
07/03/17	Trial preparation	4.4 hrs.
07/04/17	Trial preparation, including deposition and review of exhibit list	2.6 hrs.
07/05/17	Prepare pre-trial order, finalize memos	4.7 hrs.
07/06/17	Trial preparation	4.9 hrs.
07/07/17	Trial preparation and teleconference with clients, re: trial and settlement	5.7 hrs.
07/09/17	Trial preparation, review of records and teleconference with clients	3.7 hrs.
07/10/17	Trial preparation, court appearance	6.0 hrs.
07/11/17	Trial preparation	8.1 hrs.
07/11/17	Trial preparation	7.9 hrs.
07/13/17	Trial preparation, prepare letter re: Jorge issue	6.1 hrs.
07/14/17	Trial preparation	7.8 hrs.
07/15/17	Trial preparation	8.1 hrs.
07/16/17	Trial preparation	9.2 hrs.
07/17/17	Trial preparation	8.9 hrs.
07/18/17	Trial	2.5 hrs.
07/21/17	Conference with S. Obradovic	0.4 hrs.

08/11/17	Revise agreement	0.6 hrs.
08/29/17	Prepare letter to court	0.3 hrs.
09/11/17	Revise settlement agreement	0.3 hrs.
09/14/17	Prepare affidavit	0.4 hrs.
09/21/17	Prepare affidavit of judgment	0.3 hrs.
09/25/17	Revise settlement agreement	0.5 hrs.
09/28/17	Attention to settlement	0.3 hrs.
10/06/17	Revise settlement agreement	0.3 hrs.
10/30/17	Attention to settlement	0.4 hrs.